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IN THE

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**Supreme Court of the United States**

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OCTOBER TERM, 1978

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**No. 78-5374**

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MICHAEL LEE SMITH,

*Petitioner,*

v.

STATE OF MARYLAND,

*Respondent.*

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ON CERTIORARI TO THE COURT OF  
APPEALS OF MARYLAND

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**BRIEF OF RESPONDENT**

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**BRIEF OF RESPONDENT**

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**OPINION BELOW AND JURISDICTION**

Citation to the opinion of the court below and statement of the jurisdiction of this Court are correctly set forth by Petitioner.

**QUESTION PRESENTED**

Does the pen register recording of telephone numbers dialed constitute a search and seizure contemplated by the Fourth Amendment to the United States Constitution?



## STATEMENT OF THE CASE

Respondent accepts the Statement of the Case set forth by Petitioner as accurate and complete.

## SUMMARY OF ARGUMENT

1. Because the use of the telephone necessarily involves the divulgence of information to a third party, *i.e.*, the telephone company, there is no expectation of privacy in the telephone number dialed. Therefore, the information recorded by the pen register does not constitute a search and seizure protected by the Fourth Amendment.

2. Because the information recorded by a pen register is routinely imparted to the telephone company, and used by the telephone company for billing and other business purposes, and because society recognizes the need to curb illegal and abusive use of the telephone, there can be no reasonable, legitimate expectation of privacy in the telephone numbers dialed.

3. Neither the balancing test nor the authorities set forth by Petitioner justify finding that the pen register constitutes a search and seizure under the Fourth Amendment.

## ARGUMENT

THE PEN REGISTER RECORDING OF TELEPHONE NUMBERS DIALED DOES NOT CONSTITUTE A SEARCH AND SEIZURE CONTEMPLATED BY THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The device known as a pen register:

"is a mechanical device attached to a given telephone line and usually installed at a central telephone facility. It records on a paper tape all numbers dialed from that line. It does not identify the telephone numbers from which incoming calls originated, nor does it reveal whether any call, either incoming or outgoing, was completed. Its use

does not involve any monitoring of telephone conversations." *United States v. Giordano*, 416 U.S. 505, 549 n.1 (1974) (Powell, J., concurring and dissenting).

Moreover,

"[n]either the purport of any communication between the caller and the recipient of the call, their identities, nor whether the call was even completed is disclosed by pen registers. Furthermore, pen registers do not accomplish the 'aural acquisition' of anything. They decode outgoing telephone numbers by responding to changes in electrical voltage caused by the turning of the telephone dial (or pressing of buttons on push button telephones) and present the information in a form to be interpreted by sight rather than by hearing." *United States v. New York Telephone Co.*, 434 U.S. 159, 167 (1977).

This case calls upon the Court to decide whether the mere recordation by a pen register of telephone numbers dialed by a telephone user constitutes a search and seizure within the scope of the Fourth Amendment. The Court of Appeals of Maryland held that it did not. That judgment should be affirmed.

### *The Fourth Amendment Right to Privacy*

In *Katz v. United States*, 389 U.S. 347 (1967), this Court focused on the individual's expectation of privacy as the touchstone of the Fourth Amendment, noting that reference to neither "constitutionally protected area" nor physical "trespass" adequately defined the scope of the protection, and that the Fourth Amendment was not restricted to seizure of tangible items. This Court said:

"What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." 389 U.S. at 351.

In his concurring opinion, Mr. Justice Harlan, defined a two part test to determine whether a person's privacy is protected within any given area:

"[F]irst that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable'" 389 U.S. at 361.

In *United States v. White*, 401 U.S. 745, 752 (1971), the Court wrote: "Our problem, in terms of the principles announced in *Katz* is what expectations of privacy are constitutionally 'justifiable' — what expectations the Fourth Amendment will protect in the absence of a warrant." This articulation places emphasis on the second (objective) prong of Mr. Justice Harlan's test, a necessary emphasis since it is a defendant's subjective expectation of privacy which gives rise to the seized communication. If there is no actual expectation of privacy exhibited, however, inquiry into what is "reasonable" or "justifiable" to society in general is unnecessary. This Court recently acknowledged that:

"[I]legitimation of expectations of privacy by law must have a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." *Rakas and King v. Illinois*, \_\_\_ U.S. \_\_\_, 99 S. Ct. 421, 58 L. Ed. 2d 387, 401 n.12 (1978).

By focusing on "understandings that are recognized and permitted by society," the inquiry becomes one of whether it is reasonably foreseeable that the conduct or communication will not remain private.

Pen registers fall outside the scope of the Fourth Amendment because the use of the telephone, though the call may originate within a person's home, necessarily involves communication to a third party (the telephone company) of the number desired to be reached, and thus there is no expectation of privacy.

The necessary communication of the number dialed, for the purpose of enabling the telephone company to connect the caller with the other phone, as well as for billing and other business purposes, precludes the finding that either an actual expectation of privacy in the number dialed exists, or that society would recognize that any such expectation would be reasonable. The mere fact that the government obtains the information from a third party, who necessarily has access to it for business purposes, establishes the non-applicability of the Fourth Amendment because there can be no expectation that the number called will remain private. In short, it is reasonably foreseeable that the numbers dialed will be known by another, and that the information will be available for communication to governmental authorities.

#### *Expectation of the individual*

It is only an intrusion by governmental officials into an individual's "zone of privacy" which implicates the Fourth Amendment. *United States v. Miller*, 425 U.S. 435, 440 (1976). Clearly, once an individual reveals the information to a third party, it is no longer private. The obvious indication that the number dialed on a telephone is imparted to the telephone company is that some of the numbers routinely appear on bills for long distance charges. The Court of Appeals for the Ninth Circuit concluded that "[t]he public awareness that such records are routinely maintained was held to negate any constitutionally sufficient expectation of privacy regarding the records." *Hodge v. Mountain States Telephone and Telegraph Co.*, 555 F.2d 254, 256 (9th Cir. 1977). From this basis, the Ninth Circuit continued:

"Although a pen register record differs from telephone company billing records, we have no difficulty in now holding that the information recorded is not protected by the Fourth Amendment.



A pen register record for a particular telephone contains information different from the telephone company billing records for that telephone. Telephone company billing records show only completed calls, not, as with a pen register, the numbers dialed. Furthermore, a pen register record shows the dialing of telephone numbers which, even if completed, would not be shown by billing records, because the numbers are within a local dialing area. It could be argued that since no records of such calls are normally maintained, an expectation of privacy exists. This admitted difference is not, in our view, of constitutional dimension and is more than offset by the fact that pen register records are even farther removed than billing records from the content of the communications. Viewed in the round, the information recorded by pen registers is not entitled to Fourth Amendment protection." 555 F.2d at 256-57.

Similar considerations highlighted the specially concurring opinion of Judge Hufstedler:

"Like billing records, a pen register tape discloses the numbers dialed from a particular telephone and not the contents of any conversation. In fact, a pen register creates a lesser intrusion into a subscriber's privacy because, unlike billing records, a pen register tape does not indicate whether any calls were answered.

True, the telephone company usually does not keep a record of local telephone calls. But most subscribers are unaware of the boundaries of their local dialing zones, especially in cities where these zones do not coincide with traditional geographic boundaries. Furthermore, it is common practice for the telephone company to keep a record of all calls dialed from a telephone which is subject to a special rate structure. Under these circumstances, subscribers do not harbor any justifiable expectation of privacy that a record will not be kept of their outgoing calls." 555 F.2d at 266 (footnote and citation omitted).

The reality that a record of all calls dialed is not "usually" kept is of no constitutional significance. The fact that the numbers dialed are imparted to the telephone company, for whatever length of time, is sufficient to negate any reasonable expectation of privacy in the information divulged. Thus, the telephone user has no legitimate expectation that the numbers he dials on a telephone will not be recorded or furnished to the authorities. By similar reasoning the Fifth Circuit has reached the same conclusion. *United States v. Clegg*, 509 F.2d 605 (5th Cir. 1975). See also *United States v. Baxter*, 492 F.2d 150 (9th Cir. 1973). That the telephone company keeps records of various aspects of telephone use is well known. *United States v. Covello*, 410 F.2d 536, 542 (2nd Cir. 1969), *cert. denied*, 396 U.S. 879 (1969). Legal commentators agree:

"First, even assuming that a privacy expectation is in fact present, it is well settled that toll calls (and their records) are not entitled to a reasonable expectation of privacy. And, with respect to most areas of the country, there seems to be no valid distinction between the expectations associated with local calls on the one hand and those calls that cross the local billing zone on the other hand. The majority of subscribers probably have no real knowledge as to the geographical boundaries of their 'local call' zone." Note, *The Legal Constraints Upon the Use of the Pen Register as a Law Enforcement Tool*, 60 Cornell L. Rev. 1028, 1044-45 (1975).

The constitutional irrelevance of a local-long distance call distinction is underscored when one considers that the signals going out from a local call are transported by the same equipment which handles long distance calls, namely, equipment maintained and owned by the telephone company. The equipment, which is the necessary conduit of all telephone calls, merely replaces the prior personal assistance of the switchboard



operator of by-gone days.<sup>1</sup> It is worth noting, moreover, that, since the "intrusion" is of the same magnitude whether local or long distance calls are involved, there is no greater reason to require a warrant for the recording of local numbers than for recording other numbers. Once the information is validly received by a third party, there is no Fourth Amendment bar to disclosure to governmental officials.

Thus, in *Hoffa v. United States*, 385 U.S. 293 (1966) (statements to a friend and confidante who recorded conversation for a police agent) and *Lopez v. United States*, 373 U.S. 427 (1963) (participant to a conversation recorded same for government use), this Court has recognized the inapplicability of the Fourth Amendment to instances where third parties are voluntarily made privy to acts or thoughts of the accused. See also *United States v. White*, 401 U.S. 745 (1971).

A more recent example of this limitation upon the scope of the Fourth Amendment is found in *United States v. Miller*, 425 U.S. 435 (1976), wherein the Court held that a bank depositor had no Fourth Amendment interest in the contents of checks and deposit slips turned over to his bank. In language strikingly appropriate to this case, the Court said:

"The depositor takes the risk, in revealing his affairs to another, that the information will be conveyed by that person to the government . . . This Court has held repeatedly that the Fourth

<sup>1</sup> In line with this thesis:

" . . . all telephone subscribers must utilize equipment owned by a third party, the telephone company, in order to place a call. It is, therefore, unreasonable for a subscriber to assume that the fact of his call passing through the telephone system will remain a total secret from the telephone company. Once this assertion is accepted, it is clear that there can be no reasonable expectation of privacy from law enforcement authorities with respect to the dial pulses directed and recorded by the telephone company." 60 Cornell L. Rev. at 1045.

Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed." 425 U.S. at 443.

We emphasize that *Miller* found no privacy interest in the *contents* of deposit slips and checks, a more intrusive disclosure than is involved here. In this case, no information as to the contents of the telephone calls was recorded or revealed by the third party to the police — the information given to the police was limited to the fact that certain numbers were dialed on certain dates. Moreover, the bank depositor in *Miller* might have some notion that he and the bank with which he decides to deal might have some special contractual or fiduciary relationship. No such "special" relationship could reasonably be thought to exist between phone user and the phone company. Everyone in a given community must use the local telephone company if one desires to use a telephone. As the Court below said:

"While the content of a call is not revealed to the telephone company, the information as to the number dialed must necessarily be revealed, since it is through telephone company switching equipment that calls are completed. As a recipient of such information, the company may reveal it since the caller can have no reasonable expectation that it will remain private. In fact, the caller should have even less of a justified expectation of privacy, since unlike the disclosures in *White* and *Miller* the use of a pen register does not reveal the contents of a communication." 283 Md. at 172.

The majority below also pointed out that mail covers, the process by which postal inspectors copy information from the outside of sealed envelopes traveling through the mails, have been upheld on several occasions. See, for example, *Lustiger v. United States*,

386 F.2d 132 (9th Cir. 1967), *cert. denied*, 390 U.S. 951 (1968), *United States v. Leonard*, 524 F.2d 1076 (2nd Cir. 1975), *cert. denied*, 425 U.S. 958 (1976), and *United States v. Balistrieri*, 403 F.2d 472 (7th Cir. 1968). Again, by revealing the identity of the parties, the mail cover elicits more information than that obtained by the pen register, which does not identify the caller, or indicate if the call is even completed.

Thus, there can be no actual expectation that the numbers one dials will remain private. But even if there were such an expectation, society has not recognized it as justifiable or reasonable.

#### *Reasonableness of Privacy Expectation*

The reasonableness of any subjective expectation of privacy in the telephone numbers dialed must be analyzed in the context of the climate in which it occurs. Because some numbers are routinely recorded by the telephone company and because the telephone company itself utilizes the pen register when necessary to investigate customer complaints about annoying calls, Respondent submits that no expectation of privacy is constitutionally justifiable.

The public concern with telephone abuse — harassing, annoying, threatening and obscene telephone calls<sup>2</sup> — prompted Congress and state legislatures to enact criminal penalties for abusive calls.<sup>3</sup> Society has legitimized the use of the pen register by recognizing that techniques must be developed and employed to

<sup>2</sup> In Maryland alone, "750,000 complaints received throughout the system in 1969 grew to 1.2 million by 1974". *Von Lusch v. C & P Telephone Company*, 457 F. Supp. 814, 817 n.2 (D. Md. 1978).

<sup>3</sup> This legislation, 47 U.S.C. Section 223, is fairly comparable to the Maryland Telephone Abuse Statute, Article 27, Section 555A, Annotated Code of Maryland, and the

detect the parties responsible for the abusive calls. Societal recognition that the telephone company will employ those techniques, including the pen register, based upon customer complaints and, when evidence is gathered, that the company will divulge it to the authorities, indicates that an expectation of privacy for the numbers dialed is not reasonable or justifiable. If it is accepted that the telephone company will record numbers to detect misuse of the telephone, it is unreasonable to expect that any particular call dialed will remain private.

The report of the Interstate and Foreign Commerce Committee of the House of Representatives, in support of legislation prohibiting telephone abuse, makes the following observation:

"[I]t should be noted that none of these techniques [for tracing or recording such calls] requires following Statutes in effect in 49 states at the present time. These states are as follows:

Ala. Code tit. 37, § 37-8-214; Alaska Stat. § 11.45.035; Ariz. Rev. Stat. § 13-2916; Ark. Stat. Ann. § 41-1437; Cal. Penal Code § 653m (West); Colo. Rev. Stat. § 18-9-111; Conn. Gen. Stat. § 53A-183; Del. Code tit. 11, §§ 1311, 1312; Fla. Stat. § 365.16; Ga. Code § 104-9901; Haw. Rev. Stat. § 711-1106; Idaho Code §§ 18-6710, 6711; Ill. Rev. Stat. ch. 134, §§ 16.4, 16.5; Ind. Code § 10-4944; Iowa Code § 708.7; Kan. Stat. § 21-4113; Ky. Rev. Stat. § 436.107; La. Rev. Stat. Ann. § 285; Me. Rev. Stat. tit. 17, § 3703; Md. Ann. Code, art. 27, § 555A; Mass. Stat. Ann. § 28-364; Minn. Stat. § 609.79; Miss. Code Ann. § 97-29-45; Mo. Rev. Stat. § 565.090; Mont. Rev. Codes Ann. § 94-8-114; Neb. Rev. Stat. § 28-1127; Nev. Rev. Stat. § 201.255; N.H. Rev. Stat. Ann. § 644:4; N.J. Rev. Stat. § 170-29; N.M. Stat. Ann. § 30-20-12; N.Y. Penal Law (McKinney) § 240.30; N.C. Gen. Stat. § 14-196; Ohio Rev. Code Ann. § 4931.31 (Page); Okla. Stat. tit. 21, § 1172; Or. Rev. Stat. § 166.065; 18 Pa. Cons. Stat. Ann. § 5504 (Purdon); R.I. Gen. Laws § 11-35-17; S.C. Code § 16-17-430; S.D. Compiled Laws Ann. §§ 49-31-31 *et. seq.*; Tenn. Code Ann. § 39-3011; Tex. Penal Code Ann. tit. 9, § 476 (Vernon); Utah Code Ann. § 76-9-201; Vt. Stat. Ann. tit. 13, § 1027; Va. Code § 18.2-427; Wash. Rev. Code § 9.61.230; W. Va. Code § 61-8-16; Wis. Stat. § 947.01; Wyo. Stat. § 6-4-612.



monitoring the content of conversations on the calling or called person's line." H.R. Rep. No. 1109, 90th Cong., 2nd Sess. 21, *reprinted in* [1968] U.S. Code Cong. & Ad. News 1915, 1916-17.

The discussion does not mention a need for probable cause or a search warrant before activating the equipment. Even if the foregoing comment is confined to activity undertaken by the telephone company alone, it is yet an acknowledgment that the techniques are acceptable to the Congress of the United States, the duly elected representatives of the people of the United States, so long as the conversations are not overheard. As this Court observed in *New York Telephone Company, supra*: "The Company concedes that it regularly employs such devices without court order for the purposes of checking billing operations, detecting fraud, and preventing violations of law." 434 U.S. at 174-175.

One writer has even hailed judicial approval of such devices (in the context of denying civil liability of a telephone company sued by phone users claiming an invasion of privacy because pen registers were employed on their telephone lines as a result of complaints from other telephone customers) as "a victory for the privacy of the vast majority of telephone customers." Claerhout, *The Pen Register*, 20 Drake L. Rev. 108, 117 (1970). Commenting upon two cases from Texas, *Carswell v. Southwestern Bell Telephone Company*, 449 S.W.2d 805 (Tex. Civ. App. 1969) and *Jarvis v. Southwestern Bell Telephone Company*, 432 S.W.2d 189 (Tex. Civ. App. 1968), the writer noted:

"... as long as the telephone company follows its strict standards in refusing to disclose pen register evidence to persons not a party to the telephone call, except, of course, to lawful authority, it will not be subjected to civil liability." 20 Drake L. Rev. at 116.

Similarly, other jurisdictions have condoned the use of pen registers by the telephone company for the avowed purpose of ferreting out violations of the law, *Coleman v. District of Columbia*, 250 A.2d 555 (D.C. App. 1969), *Harmon v. Commonwealth*, 166 S.E.2d 232 (Va. 1969), *People v. Schneider*, 257 N.Y.S.2d 876 (N.Y. 1965), and *State v. Cyr*, 389 A.2d 834 (Me. 1978). See also *Hodge v. Mountain State Telegraph and Telephone Co., supra*, and *Von Lusch v. C & P Telephone Co., supra*. *Von Lusch* was partly decided upon the finding of the trial court that the pen register "cannot violate Fourth Amendment rights", 457 F. Supp. at 818. It is therefore evident that pen registers are in widespread use to combat the equally widespread phenomenon of abusive use of the telephone and that the telephone company divulges all relevant information obtained to the police for purposes of investigation, arrest, and prosecution. Respondent has found no cases (and Petitioner notes none) where the telephone company has indiscriminately given lists of all calls made by the suspect to the authorities, or where the telephone company and police have connived to convert a pen register into a wiretap. No contention is made in the present case that either form of abuse occurred. Furthermore, the routine use of the pen register by the telephone company and judicial approval thereof demonstrate that, contrary to Petitioner's assertion, society has not sought to prevent the use of the pen register without prior judicial approval as a general proposition.

In sum, given the non-existent basis upon which to assert an actual (subjective) expectation of privacy and the recognition that pen registers are routinely employed by the telephone company to detect telephone abuse, the privacy interest with which the Fourth Amendment is concerned is absent.

Petitioner's assertion that the decision in this case depends on the resolution of a balancing test assumes Fourth Amendment applicability. Respondent submits that the foregoing argument establishes that pen registers do not abridge any legitimate expectation of privacy and urges this Court not to be misled by Petitioner's argument that, as a policy matter, searches conducted pursuant to a warrant are to be preferred to warrantless intrusions.

An examination of the factors, moreover, does not militate in favor of imposing a warrant requirement as a policy matter. The possibility of abuse is minimal given the telephone company procedures and statutes<sup>4</sup> limiting disclosures. Validating the warrantless use of pen registers will not automatically lead to warrantless use of more intrusive devices. The unique and limited nature of the device, which can neither identify the parties to the call nor overhear any communication, guarantees that its use will not adversely affect the exercise of free speech or any individual privacy right. On the other hand, the burden on law enforcement, if a warrant requirement is imposed, will be substantial. The time necessary to secure the warrant, assuming probable cause exists, may well destroy any hope of securing the needed evidence. And the usefulness of the device will be eliminated entirely in cases where reasonable suspicion, but not probable cause, exists. In short, even a balance of the policy factors argued by Petitioner does not justify imposition of the warrant requirement. The severely limited nature of the information revealed and recorded by a pen register is simply not intrusive enough to offset the factors which clearly weigh against imposing such a requirement.

<sup>4</sup> See, e.g., 47 U.S.C. Section 605, prohibiting interception of communications by the telephone company except under very limited circumstances, and 18 U.S.C. Section 2520, governing analogous misconduct by police authority. Comparable Maryland law is found at Code, Courts and Judicial Proceedings Article, Section 10-410.

The courts which have addressed the issue squarely have concluded that the pen register is not a Fourth Amendment intrusion. Just as this Court has twice found it unnecessary to decide the question posed in this case, *United States v. Giordano*,<sup>5</sup> *supra*, and *United States v. New York Telephone Company*,<sup>6</sup> *supra*, so have other courts where the need for Fourth Amendment compliance was not challenged. Petitioner's reliance on those cases is therefore misplaced.

In *Application of the United States of America, In the Matter of an Order Authorizing the Use of a Pen Register or Similar Mechanical Device*, 538 F.2d 956 (2nd Cir. 1977), the case ultimately decided by this Court *sub nom. New York Telephone Co.*, *supra*, the government conceded the applicability of the Fourth Amendment: "[T]he government argues that a District Court has inherent authority or power under Rule 41 F.R.C.P. to issue such an order [for placement of a pen register], subject only to the restraints of the Fourth Amendment." 538 F.2d at 959.

Similarly, in *United States v. Illinois Bell Telephone Co.*, 531 F.2d 809, 812 n.6 (7th Cir. 1976), the government sought a court order to compel a reluctant telephone company to install a pen register, and the

<sup>5</sup> "The Government suggests that the use of a pen register may not constitute a search within the meaning of the Fourth Amendment. I need not address this question, for in my view the constitutional guarantee, assuming its applicability, was satisfied in this case." 416 U.S. at 554, n.4 (Powell, J., concurring and dissenting).

<sup>6</sup> "The Court of Appeals held that pen register surveillance was subject to the requirements of the Fourth Amendment. This conclusion is not challenged by either party, and we find it unnecessary to consider the matter . . ." 434 U.S. at 165 n.7.

Despite the disclaimer by this Court, one Circuit, in the context of a civil suit for invasion of privacy, has found *New York Telephone Co.*, to hold that there is "no federal bar to the use of a pen register without a warrant." *Martin v. DeSilva*, 566 F.2d 360 (1st Cir. 1977).



company did not question the presence of probable cause. And, in *United States v. Southwestern Bell Telephone Co.*, 546 F.2d 243 (8th Cir. 1976), because the government was seeking a court order to secure telephone company cooperation, the need for probable cause was simply not questioned.

The other cases cited by Petitioner all involve use of a pen register in conjunction with a wiretap for which Title III authorization had already been obtained, *United States v. Brick*, 502 F.2d 219 (8th Cir. 1974), *United States v. John, et al.*, 508 F.2d 1134 (8th Cir. 1975), *cert. denied*, 421 U.S. 962 (1975), *United States v. Falcone*, 505 F.2d 478 (3rd Cir. 1974), *cert. denied*, 420 U.S. 955 (1975), and *United States v. Doolittle*, 507 F.2d 1368 (5th Cir. 1975), *cert. denied*, 423 U.S. 1008 (1974). As the *Falcone* court acknowledged: "[n]or must we decide, under the facts of this case, what authorization is necessary when a pen register is used alone." 505 F.2d at 482.

## CONCLUSION

When one considers the limited nature of the intrusion, the specific uses to which the pen register is put, the routine use of the device by the telephone company with accompanying privacy safeguards, the knowledge of the subscriber that some recordation of his dialed numbers does routinely occur, the use of the phone company equipment by the subscriber, the comparison of the pen register to mail covers and bank deposits, and the limited but persuasive authority on the Fourth Amendment question, one must conclude that the Court of Appeals of Maryland reached the correct result. Respondent prays that the judgment of the Court of Appeals of Maryland be affirmed.

Respectfully submitted,

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